

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LEE ARTERS T/A GREENDALE BUILDERS	:	CIVIL ACTION – LAW
	:	
Plaintiff(s),	:	
v.	:	NO. 02-CV-4388
	:	
ZURICH AMERICAN INSURANCE CO. t/a,	:	
ZURICH NORTH AMERICA as successor in	:	
Interest to ASSURANCE CO. OF AMERICA	:	JURY OF TWELVE (12)
	:	DEMANDED
and	:	
	:	
ASSURANCE CO. OF AMERICA	:	
	:	
Defendant(s).	:	

ORDER

AND NOW, this ____ day of _____, 2003 upon consideration of Plaintiffs' Motion to Compel Responses to Plaintiff's Interrogatories and Request for Production of Documents and Defendant's Response thereto, it is hereby ORDERED, ADJUDGED and DECREED that the Motion is denied as moot with respect to the First and Second Set of Interrogatories and that Defendant shall serve its formal objections and responses to Plaintiff's Request for Production of Documents on or before March 17, 2003.

J.

**IN THE UNITED STATES DISTRICT COURT
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LEE ARTERS T/A GREENDALE BUILDERS	:	CIVIL ACTION – LAW
	:	
Plaintiff(s),	:	
v.	:	NO. 02-CV-4388
	:	
ZURICH AMERICAN INSURANCE CO. t/a,	:	
ZURICH NORTH AMERICA as successor in	:	
Interest to ASSURANCE CO. OF AMERICA	:	JURY OF TWELVE (12)
	:	DEMANDED
and	:	
	:	
ASSURANCE CO. OF AMERICA	:	
	:	
Defendant(s).	:	

**ASSURANCE COMPANY OF AMERICA’S RESPONSE TO PLAINTIFFS’
MOTION TO COMPEL RESPONSES TO INTERROGATORIES
AND PRODUCTION OF DOCUMENTS**

Defendant, Assurance Company of American (“ACOA”), through its undersigned counsel, hereby responds to the averments set forth in Plaintiffs’ Motion. As responses to Plaintiff’s First and Second Set of Interrogatories have now been faxed to attorney Nolan’s office, respondents respectfully suggest that the Motion is moot as to the Interrogatories. Defendant respectfully requests that it be provided twenty (20) days in which to serve its response to the pending Request for Production of Documents.

1. Admitted. By way of further response, Assurance Company of American is the only proper defendant. The First Set of Interrogatories consisted of 25 questions with an additional 37 subparts for a total of 62 questions.

2. Admitted.

3. Admitted that ACOA, through counsel filed a timely status report with the Court on November 5, 2002, estimating that discovery could be completed by February 4, 2003. At that time, however, only the first set of interrogatories had been submitted by Plaintiff. On or about November 20, 2002, Plaintiff submitted a second set of interrogatories even though their first set exceeded the number permitted by Fed. R. Civ. P. 33(a). The Second Set of Interrogatories was, in part, duplicative of the First Set, and also sought irrelevant information not required for this Court's adjudication of the differences between the parties. Moreover, the Second Set contained 56 numbered questions with 91 distinct subparts for a total of 147 questions. Plaintiffs also submitted a request for production of documents. Many responsive documents, including the certified copy of the Greendale Builders' policy of insurance were previously provided to or already in the possession of counsel to Plaintiff.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted. Defendant's counsel acknowledged Plaintiffs' counsel's voicemail message refusing to extend discovery further, although the status of defendant's written responses, which were out for review by the client representative, was provided.

10. Denied as Responses and Objections were faxed to plaintiff's counsel on February 24, 2003.

11. Admitted.

12. Admitted.

13. Denied. Defendant has complied. Defendant also diligently sought extensions and kept plaintiff apprised of its progress in responding to the Interrogatories. See letter dated February 6, 2003 attached hereto as Exhibit "A".

WHEREFORE, respondents respectfully request that Plaintiffs' Motion to Compel Answers to First and Second Set of Interrogatories be dismissed as moot and that Assurance Company of America be provided twenty (20) days in which to serve its responses to Plaintiff's Request for Production of Documents.

Respectfully submitted,

HECKER BROWN SHERRY AND JOHNSON LLP

BY: _____
Carl H. Delacato, Jr.
Attorneys for Defendant,
Assurance Co. of America

Dated: February 24, 2003

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LEE ARTERS T/A GREENDALE BUILDERS	:	CIVIL ACTION – LAW
	:	
Plaintiff(s),	:	
v.	:	NO. 02-CV-4388
	:	
ZURICH AMERICAN INSURANCE CO. t/a, ZURICH NORTH AMERICA as successor in Interest to ASSURANCE CO. OF AMERICA	:	JURY OF TWELVE (12)
	:	DEMANDED
and	:	
	:	
ASSURANCE CO. OF AMERICA	:	
	:	
Defendant(s).	:	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S RESPONSE TO
MOTION TO COMPEL DISCOVERY RESPONSES**

Defendant respectfully suggests that the Motion, insofar as it relates to Plaintiff’s First and Second Sets of Interrogatories, is moot. On February 24, 2003, Answers and Objections were faxed to attorney Nolan. Attached hereto collectively as Exhibit “B” are a copy of the transmittal letter and the applicable certificates of service.

Defendant’s counsel diligently sought extensions of time from plaintiff’s counsel, and plaintiff afforded professional courtesy in that regard. If further issues arise as to the Responses, it is respectfully suggested that such dispute be assigned to a Magistrate Judge for disposition. All that remains outstanding at this time is a response to the Document Request of Plaintiff. Defendant respectfully requests that it be provided twenty (20) days from February 24, 2003 in which to respond. Much of the requested information has already been provided to, or is in the hands of the plaintiff’s attorney. Further, counsel to plaintiff has submitted a trial-ready date of June 1, 2003. Under the circumstances, it is respectfully suggested that the Motion is moot as to

the First and Second Sets of Interrogatories. It is further requested that defendant be permitted to serve its formal response to Plaintiff's Request for Production of Documents on or before March 17, 2003.

Respectfully submitted,

HECKER BROWN SHERRY AND JOHNSON LLP

BY: _____
Carl H. Delacato, Jr.
Attorneys for Defendant,
Assurance Co. of America

Dated: February 24, 2003

CERTIFICATE OF SERVICE

Carl H. Delacato, Jr., Esquire, hereby certifies that on this 24th day of February 2003, he caused a true and correct copy of the foregoing **Response to Plaintiffs' Motion to Compel** to be served on the counsel listed below via facsimile transmission and first class United States mail, postage prepaid and properly franked as follows:

Francis X. Nolan, Esquire
VAUGHAN DUFFY & CONNORS, LLP
102 Pickering Way, Suite 400
Exton, PA 19341
Facsimile #: 610/524-0600

Carl H. Delacato, Jr.